

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

IN AND FOR NEW CASTLE COUNTY

STATE OF DELAWARE

v.

RUDOLPH V. HARDIN,

Defendant.

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ID No. 02090008562

MEMORANDUM OPINION

On Defendant's Motion for Postconviction Relief

DENIED

Submitted: July 27, 2005

Decided: September 12, 2005

Andrew Vella, Esquire, Department of Justice, Wilmington, DE, Attorneys for the State

Rudolph V. Hardin, *Pro Se*

JOHNSTON, J.

Upon consideration of Defendant's Motion for Postconviction Relief pursuant to Superior Court Criminal Rule 61, the Court finds as follows:

In May 2003, a Superior Court jury convicted defendant Rudolph V. Hardin of Trafficking in Cocaine, Possession with Intent to Deliver a Controlled Narcotic Schedule II Substance, Maintaining a Vehicle for Keeping Controlled Substances, and Possession of a Non-Narcotic Schedule I Controlled Substance. On August 22, 2003, Hardin was sentenced to eight years imprisonment with probation to follow. On March 11, 2004, the Delaware Supreme Court affirmed the conviction of the Superior Court.

Hardin now brings this Rule 61 Motion for Postconviction Relief. The motion alleges nine separate grounds for relief. Hardin asserts violation of practically every constitutional right. Defendant attempts to support his claim in an excessively long (116 pages) memorandum of law, supplemented by a 202-page appendix. A majority of Hardin's allegations are procedurally barred under Rule 61(i), and the remaining contentions lack merit and warrant dismissal.

Grounds one, two, four and five of Hardin's motion are procedurally barred pursuant to Rule 61(i)(4).¹ Grounds one and two contend that Defendant's due

¹Super. Ct. Crim. R. 61(i)(4). Former Adjudication: Any ground for relief that was formerly adjudicated, whether in the proceedings leading to the judgment of conviction, in an appeal, in a postconviction proceeding, or in a federal habeas corpus proceeding, is thereafter

process rights were violated when the Court erroneously admitted evidence at trial. Hardin claims that the police lacked probable cause to effectuate a legal search; therefore, all of the evidence was illegally seized and incorrectly admitted by the Court. Additionally, Hardin argues that the Court inappropriately allowed the prosecution to present an alternative “plain view” approach supporting admissibility of the evidence. The record clearly demonstrates that the Supreme Court previously addressed these issues on appeal.

The Supreme Court concluded that the police properly obtained the evidence under the plain view and inevitable discovery doctrines. Also, the Supreme Court determined that the prosecution properly offered the evidence under these doctrines.² Following the legal acquisition and offering of evidence, the Superior Court correctly admitted the evidence and the admission is free of legal error.

Ground four of the motion asserts that Defendant’s rights were violated when the Court incorrectly denied Defendant’s Motion for Judgment of Acquittal. Defendant’s motion alleged that the evidence presented at trial was insufficient to convict Defendant of possession with the intent to deliver cocaine. On direct

barred, unless reconsideration of the claim is warranted in the interest of justice.

²*Hardin v. State*, 844 A.2d 982 (Del. 2004).

appeal, the Supreme Court determined that sufficient evidence existed to find Defendant guilty of possession with intent to deliver cocaine. The quantity and packaging of the drugs, the lack of paraphernalia for personal consumption, and expert testimony, were sufficient to support a finding of intent to deliver. Therefore, the Supreme Court previously has addressed the issue presented in Defendant's Motion for Judgment of Acquittal.

Ground five alleges that Defendant's due process rights were violated when the Court convicted Hardin of trafficking in cocaine despite a lack of sufficient evidence. Defendant contends that because the State failed to show that Defendant was in actual possession of the drugs, a finding of intent to traffic is deficient. Contrary to Hardin's contentions, the Supreme Court concluded that the "State presented sufficient evidence to establish Hardin's constructive possession of the drugs under [the car's] sun visor."

Pursuant to Rule 61(i)(4) Defendant may avoid this procedural bar if Defendant demonstrates that reconsideration of the claim is warranted in the interest of justice.³ This exception has been narrowly interpreted to include only claims that question the authority of the Court to convict or punish the Defendant.⁴

³Super. Ct. Crim R. 61(i)(4).

⁴*Flamer v. State*, 585 A.2d 736, 746 (Del. 1990).

Defendant has made no attempt to question this Court's, or any other Court's, authority to decide his case.

In ground three, Hardin alleges that his due process rights were violated when the trial court failed to follow several Delaware Rules of Evidence regarding expert witnesses. This ground for relief is procedurally barred under Rule 61(i)(3), in that it was available to Hardin during trial and on direct appeal. However, Hardin claims that due to ineffective assistance of counsel, he was unable to raise these claims during past proceedings.⁵ A claim of ineffective assistance of counsel must pass the well-established, two-part *Strickland* test. To effectively prove a claim of ineffective counsel, the movant must show that counsel's representation fell below an objective standard of reasonableness *and* that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different. There is a strong presumption that counsel's conduct was reasonable or could have been considered sound trial

⁵*Cobb v. State*, Del. Supr., No. 362, 1995, Hartnett, J.(Jan. 10, 1996)(Order) at 7 (A claim of ineffective assistance of counsel, if proven, may establish "cause" for relief from the procedural bar of Rule 61(i)(3)).

strategy at the time.⁶ Further, the movant must corroborate the ineffective assistance of counsel claim with concrete allegations of actual prejudice.⁷

Hardin offers no factual or legal evidence that supports his claim of ineffective assistance of counsel. Hardin simply mentions that he will “demonstrate” how counsel was ineffective. Hardin makes no further attempt throughout his voluminous memorandum to explain how his counsel’s conduct fell below a reasonable standard, or how such conduct prejudiced his case. Therefore, Defendant fails to show cause for relief from the Rule (i)(3) procedural bar.

Ground six asserts that Defendant’s constitutional protection against double jeopardy was violated when his convictions of trafficking cocaine and intent to deliver cocaine arose from the same incident. This claim also is procedurally barred pursuant to Rule 61(i)(3), as Defendant failed to bring this claim on direct appeal. Additionally, the merits of this claim are extremely weak. Hardin failed to make any cogent arguments supporting this allegation. Hardin even acknowledges that these are two distinct and separate crimes. The evidence offered in support of this claim in no way relates to any allegation of double jeopardy. Hardin appears

⁶*Strickland v. Washington*, 466 U.S. 668, 689-90 (1984).

⁷*State v. Mason*, 1998 WL 449563, at *3 (Del. Super.).

to use this groundless claim as another opportunity to complain about the supposed insufficiency and inadmissibility of evidence.

In ground seven, Petitioner alleges that his constitutional right to due process was violated when the State imposed an enhanced penalty, based on prior convictions, without the statutorily required notification and hearing. This claim was available on appeal and is procedurally barred pursuant to Rule 61(i)(3).

Once again, Hardin attempts to avoid this procedural bar by claiming counsel was ineffective. Counsel's decision not to argue these claims was neither unreasonable nor prejudicial to the outcome for the following reasons. Defendant inaccurately assumes he is conferred the rights afforded under 11 *Del. C.* § 4215. The statute only applies to defendant whose enhanced punishments are "*greater than the maximum* which may be imposed upon a person not so previously convicted."⁸ Intent to deliver cocaine is a class C felony and first time offenders may be punished by incarceration of up to fifteen years.⁹ Hardin's five-year sentence for intent to deliver does not exceed the maximum sentence. Therefore,

⁸11 *Del. C.* § 4215(a) ("If at the time of sentence, it appears to the court that the conviction of a defendant constitutes a second or other conviction making the defendant liable to *a punishment greater than the maximum which may be imposed upon a person not so previously convicted*, the court shall fully inform the defendant as to such previous conviction or convictions and shall call upon the defendant to admit or deny such previous conviction or convictions.") (emphasis added).

⁹11 *Del. C.* § 4205.

11 *Del. C.* § 4215 is not applicable. Also, the evidentiary hearing that is mandated in 11 *Del. C.* § 4751 is only required when the Attorney General attempts to sentence the defendant as a nonaddict.¹⁰ The Attorney General did not move to sentence Hardin as a nonaddict; therefore, Hardin is not entitled to an evidentiary hearing. This ineffective assistance of counsel claims fails to relieve defendant of Rule 61(i)(3)'s bar to relief.

Ground eight asserts that Hardin's due process rights were violated when officers intentionally offered perjured testimony and the prosecution misrepresented evidence to secure a conviction. This claim is procedurally barred by Rule 61(i)(3) because these grounds for relief were available throughout trial and on direct appeal. Again, Defendant fails to satisfy the *Strickland* test. It is more than reasonable to conclude that counsel did not pursue these allegations because there was a complete lack of evidence. Hardin fails to demonstrate that his counsel was aware of any substantial evidence to support law enforcement or prosecutorial misconduct. Hardin is far from overcoming the strong presumption that counsel's conduct was reasonable. Further, if counsel had addressed these

¹⁰16 *Del. C.* § 4751(d) ("Where an individual is convicted of a violation of subsection (a), subsection (b) or subsection(c) of this section and *the Attorney General may move to sentence the defendant as a nonaddict*, the court shall conduct a hearing at which the Attorney General shall have the burden of proof by a preponderance of the evidence that the defendant is a nonaddict.") (emphasis added).

claims, it is improbably that the result of the proceedings would have been different. The officers' supposed perjured testimony is irrelevant because the Supreme Court affirmed that all evidence was correctly obtained and admitted.

Hardin alleges dozens of other claims of ineffective assistance of counsel throughout his meandering 116-page submission. All of Hardin's contentions fail to pass the well-established, two-part *Strickland* test. This Court and the Supreme Court have directly and indirectly answered all questions relating to the acquisition and admittance of evidence, and it would have been futile for counsel to have further pursued these claims.

Petitioner also contends that frequent changes in his court-appointed representation amount to ineffective assistance of counsel. He argues that the Public Defender's shifting of counsel resulted in inadequately-informed and ill-prepared representation. These allegations are unsupported by the factual or legal arguments, and fail to overcome the strong presumption that counsel's conduct was reasonable. Hardin fails to corroborate the ineffective assistance of counsel claims with concrete allegations of actual prejudice.

Hardin asserts that counsel's failure to call Shakeeta Butler, and related witnesses, constitutes ineffective assistance of counsel. Trial counsel responded that she made a tactical decision not to call Ms. Butler. Ms. Butler failed to appear

on time, as subpoenaed, for the first trial date, which was rescheduled. Counsel informed the Court that Hardin was aware of, and at the time agreed with, counsel's rationale. Hardin was fully aware of counsel's assessment of potential evidence, as well as the strengths and weaknesses of the defense case.

THEREFORE, Defendant's Motion for Postconviction Relief is hereby **DENIED**.

IT IS SO ORDERED.

The Honorable Mary M. Johnston